

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD SLEZAK,
Plaintiff,

v.

TCIF, et al.,

Defendants

No. C-05-3537 MMC

**ORDER GRANTING PLAINTIFF'S
REQUEST FOR OPPORTUNITY TO FILE
FIRST AMENDED COMPLAINT;
VACATING HEARINGS; CONTINUING
CASE MANAGEMENT CONFERENCE**

Before the Court is defendant Select Portfolio Servicing's ("SPS") motion to dismiss, filed February 2, 2006 and scheduled for hearing March 17, 2006. On March 2, 2006, plaintiff filed an untimely opposition,¹ which consists, in its entirety, of a request for leave to file an amended complaint in "less than 3 weeks," which request is noticed for hearing on March 10, 2006.

Where no answer has been filed, a plaintiff may file one amended complaint without leave of court. See Fed. R. Civ. P. 15(a). Accordingly, the March 10, 2006 hearing is hereby VACATED as moot. Further, because the filing of an amended complaint would moot SPS's motion to dismiss the original complaint, see Bullen v. De Bretteville, 239 F. 2d 824, 833 (9th Cir. 1956), ("[A]n amended pleading supersedes the original, the latter being

¹Pursuant to the Civil Local Rules of this District, plaintiff's opposition was due no later than February 24, 2006. See Civil L. R. 7-3(a) (providing opposition to motion must be filed no less than 21 days before hearing date).


1 treated thereafter as non-existent.”), and because, according to plaintiff’s description
2 thereof, the proposed amended complaint will address deficiencies identified by SPS in its
3 motion to dismiss, the Court VACATES the March 17, 2006 hearing on the motion to
4 dismiss and sets the following schedule:

5 1. No later than March 21, 2006, plaintiff shall file with the Clerk of the Court, and
6 serve on all defendants, his First Amended Complaint. If plaintiff has not filed a First
7 Amended Complaint by March 21, 2006, the Court will rule on SPS’s motion to dismiss the
8 original complaint.

9 2. The initial case management conference is CONTINUED from March 31, 2006 to
10 May 12, 2006, at 10:30 a.m. A joint case management statement shall be filed no later
11 than May 5, 2006.

12 **IT IS SO ORDERED.**

13
14 Dated: March 6, 2006


MAXINE M. CHESNEY
United States District Judge